

# **EXHIBIT 5**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 UNITED STATES OF AMERICA,

4 v.

09 CR 213 (DC)

5 BERNARD L. MADOFF,

6 Defendant.

7 -----X

8 New York, N.Y.  
9 March 12, 2009  
10 10:00 a.m.

11 Before:

12 HON. DENNY CHIN,

13 District Judge

14 APPEARANCES

15 LEV L. DASSIN

16 United States Attorney for the  
17 Southern District of New York

MARC O. LITT

17 LISA BARONI

18 Assistant United States Attorneys

19 DICKSTEIN SHAPIRO LLP

Attorneys for Defendant

20 BY: IRA LEE SORKIN

DANIEL J. HORWITZ

NICOLE P. DE BELLO

21 MAURO M. WOLFE

22 ALSO PRESENT: STEVEN GARFINKEL, FBI

KEITH KELLY, FBI

23 JULIA SCHULTE HANISH, USDOJ, FBI

24 THEODORE V. CACIOPPI, FBI

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1 (Case called)

2 MR. LITT: Marc Litt for the United States. With me  
3 at counsel table are Lisa Baroni, an Assistant U.S. Attorney,  
4 and four FBI agents: Steven Garfinkel, Keith Kelly, Julia  
5 Hanish, and Ted Cacioppi. Good morning, your Honor.

6 MR. SORKIN: Good morning, your Honor. On behalf of  
7 the defendant Bernard L. Madoff, the law firm of Dickstein  
8 Shapiro LLP. Mr. Madoff is sitting to my left. To my right is  
9 Daniel Horwitz of my firm. To Mr. Madoff's left is Mauro Wolfe  
10 from my firm, and to Mr. Wolfe's left is Nicole De Bello from  
11 my firm. Good morning.

12 THE COURT: Good morning.

13 Mr. Sorkin, your client is still prepared to plead  
14 guilty today as we discussed on Tuesday?

15 MR. SORKIN: Yes, your Honor.

16 THE COURT: Mr. Madoff, if you would stand, please,  
17 and the deputy clerk will administer the oath.

18 (Defendant sworn)

19 MR. SORKIN: Your Honor, before you begin the  
20 allocution, we have provided the government and the court  
21 reporter with a copy of the allocution that Mr. Madoff will  
22 read, and we have a copy if the Court wishes to see it as well.

23 THE COURT: Yes. Thank you.

24 MR. SORKIN: May I hand it up?

25 THE COURT: Yes.

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1 This statement is intended to cover all 11 counts?

2 MR. SORKIN: Yes, your Honor. After your Honor goes  
3 through, he will give a statement which we believe will cover  
4 all the elements. Thank you.

5 THE COURT: Mr. Madoff, do you understand that you are  
6 now under oath and that if you answer my questions falsely,  
7 your untrue answers may later be used against you in another  
8 prosecution for perjury or making false statements?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Try to keep your voice up so that I can  
11 hear you, please.

12 THE DEFENDANT: Yes, I do, your Honor.

13 MR. SORKIN: Can we get some water, your Honor?

14 THE COURT: Yes.

15 MR. LITT: I would note that the defendant has not yet  
16 been arraigned on the information.

17 THE COURT: All right. That's true. Technically, we  
18 did the first part of it. We never did the final part. Let me  
19 just ask the final question.

20 Mr. Madoff, the other day you waived indictment and  
21 you consented to being charged by an information of the  
22 government, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: And how do you now plead to the  
25 information, guilty or not guilty?

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1 THE DEFENDANT: Guilty.

2 THE COURT: Before I accept the plea I will conduct  
3 the allocution.

4 Would you state your full name for the record, please.

5 THE DEFENDANT: Bernard L. Madoff.

6 THE COURT: On Tuesday you told me your age and

7 educational background. We talked a little bit about your  
8 medical condition. Has your medical condition changed since  
9 Tuesday?

10 THE DEFENDANT: No, it has not.

11 THE COURT: In the past 24 hours, have you taken any  
12 drugs, medicine, or pills, or have you drunk any alcohol?

13 THE DEFENDANT: No.

14 THE COURT: Is your mind clear today?

15 THE DEFENDANT: Yes, it is.

16 THE COURT: And are you feeling all right today under  
17 the circumstances?

18 THE DEFENDANT: Yes, I am.

19 THE COURT: Do either counsel have any doubt as to Mr.  
20 Madoff's competence to plead at this time?

21 MR. LITT: The government does not.

22 MR. SORKIN: No, your Honor.

23 THE COURT: Now, Mr. Madoff, as I understand it, you  
24 wish to plead guilty today to all 11 counts of the information,  
25 is that correct?

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1 THE DEFENDANT: Yes, it is correct.

2 THE COURT: Have you had a full opportunity to discuss  
3 your case with Mr. Sorkin and to discuss the consequences of  
4 pleading guilty?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: You told me on Tuesday that you were  
7 satisfied with Mr. Sorkin and his representation of you. Are  
8 you still satisfied?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: On the basis of Mr. Madoff's responses to  
11 my questions and my observations of his demeanor, I find that  
12 he is fully competent to enter an informed plea at this time.

13 Now, Mr. Madoff, before I accept any plea from you I  
14 am going to ask you some additional questions that are intended  
15 to satisfy me that you wish to plead guilty because you are  
16 guilty and that you fully understand the consequences of your  
17 plea. If you do not understand any of my questions, please ask  
18 me or Mr. Sorkin to explain.

19 I am going to describe to you certain rights that you  
20 have under the Constitution and laws of the United States. You  
21 will be giving up these rights if you plead guilty, so please  
22 listen carefully.

23 Under the Constitution and laws of the United States,  
24 you have a right to a speedy and public trial by a jury on the  
25 charges against you which are contained in the information. If

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1 there were a trial, you would be presumed innocent and the  
2 government would be required to prove your guilt by competent  
3 evidence beyond a reasonable doubt. You would not have to  
4 prove that you were innocent if you were to go to trial.

5 If there were a trial, you would have the right to be  
6 represented by an attorney. And if you could not afford one,  
7 an attorney would be provided for you free of cost.

8 If there were a trial, you would have a right to see  
9 and hear all the witnesses against you and your attorney could  
10 cross-examine them. You would have a right to have your  
11 attorney object to the government's evidence and to offer  
12 evidence on your own behalf if you so desired, and you would  
13 have the right to have subpoenas issued or other process used  
14 to compel witnesses to testify in your defense.

15 If there were a trial, you would have the right to  
16 testify if you wanted to, but no one could force you to testify  
17 if you did not want to. Furthermore, no inference or  
18 suggestion of guilt could be drawn if you chose not to testify  
19 at trial.

20 Mr. Madoff, do you understand each and every one of  
21 these rights?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that by pleading guilty  
24 today you are giving up each and every one of these rights, you  
25 are waiving these rights, and you will have no trial?

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1 THE DEFENDANT: I do.

2 THE COURT: Do you understand that you have the right  
3 even now to refuse to plead guilty?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: You do not have to enter a plea of guilty  
6 if you do not want to, for any reason.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, did you receive a copy of the  
10 information?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: And as we discussed on Tuesday and as we  
13 discussed a moment ago, do you understand that you have waived  
14 your right to be charged by an indictment, which is issued by a  
15 grand jury, and you have consented to being charged by the  
16 information which is issued by the prosecutor?

17 THE DEFENDANT: Yes.

18 THE COURT: And did you waive that right voluntarily  
19 and knowingly?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, I am going to review the counts with  
22 you. As we said, the information contains 11 counts.

23 Count One charges securities fraud.

24 Count Two charges investment adviser fraud.

25 Count Three charges mail fraud.



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1 Count Four charges wire fraud.

2 Count Five charges international money laundering to  
3 promote fraud in the sale of securities.

4 Count Six charges international money laundering to  
5 conceal the proceeds of fraud in the sale of securities.

6 Count Seven charges money laundering.

7 Count Eight charges making false statements.

8 Count Nine charges perjury.

9 Count Ten charges making a false filing with the  
10 Securities and Exchange Commission.

11 And Count Eleven charges theft from an employee  
12 benefit plan.

13 Do you understand that those are the charges against  
14 you?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: I'll ask the government to advise the  
17 defendant of the elements of the crimes.

18 MR. LITT: Yes, your Honor. With respect to Count  
19 One, securities fraud --

20 THE COURT: Hold on one second.

21 Mr. Madoff, you can be seated. Pour yourself some  
22 water.

23 THE DEFENDANT: Thank you.

24 MR. LITT: With respect to Count One, securities  
25 fraud, in order to prove the crime of securities fraud, the

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1 government must establish each of the following three elements  
2 beyond a reasonable doubt:

3 First, that in connection with the purchase or sale of  
4 a security, the defendant did any one or more of the following:  
5 (1) employed a device, scheme, or artifice to defraud or (2)  
6 made an untrue statement of a material fact or omitted to state  
7 a material fact which made what was said under the  
8 circumstances misleading; or (3) engaged in an act, practice,  
9 or course of business that operated or would operate as a fraud  
10 or deceit upon a purchaser or seller.

11 Second, that the defendant acted knowingly, willfully,  
12 and with the intent to defraud;

13 And, third, that the defendant knowingly used or  
14 caused to be used any means or instruments of transportation or  
15 communication in interstate commerce or the use of the mails in  
16 furtherance of the fraudulent conduct.

17 With respect to investment adviser fraud, the  
18 government would have to prove beyond a reasonable doubt all  
19 four of the following elements: First, that the defendant was  
20 an investment adviser; second, that the defendant either (A)  
21 employed a device, scheme, or artifice to defraud clients and  
22 prospective clients; (B) engaged in a transaction, practice, or  
23 course of business which operated as a fraud or deceit upon  
24 those clients and prospective clients; or (C) engaged in an  
25 act, practice, and course of business that was fraudulent,

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1 deceptive, and manipulative.

2 Third, that the defendant devised or participated in  
3 such alleged device, scheme, or artifice to defraud or engaged  
4 in such alleged transaction, practice, or course of business,  
5 knowingly, willfully, and with intent to defraud.

6 And, fourth, that the defendant employed such alleged  
7 device, scheme, or artifice to defraud or engaged in such  
8 alleged transaction, practice, or course of business by use of  
9 the mails or other instrumentality of interstate commerce.

10 In order to prove the crime of mail fraud, the  
11 government must establish beyond a reasonable doubt the  
12 following four elements:

13 First, that at or about the time alleged in the  
14 indictment there was a scheme or artifice to defraud in order  
15 to obtain property or money by false and fraudulent pretenses,  
16 representations, or promises;

17 Second, that the false or fraudulent statements and  
18 representations concerned material facts;

19 Third, that the defendant knowingly and willfully  
20 devised or participated in the scheme or artifice to defraud  
21 with knowledge of its fraudulent nature and with specific  
22 intent to defraud;

23 And, fourth, that the United States Mails were used in  
24 furtherance of the scheme as specified in the information.

25 In order to prove the crime of wire fraud the

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1 government must establish the following four essential  
2 elements:

3 First, that at or about the time alleged in the  
4 information there was a scheme or artifice to defraud in order  
5 to obtain property or money by false and fraudulent pretenses,  
6 representations, or promises;

7 Second, that the false or fraudulent statements and  
8 representations concerned material facts;

9 Third, that the defendant knowingly and willfully  
10 devised or participated in the scheme or artifice to defraud  
11 with knowledge of its fraudulent nature and with specific  
12 intent to defraud

13 And, fourth, that interstate or foreign wire  
14 facilities were used in furtherance of the scheme to defraud as  
15 specified in the information.

16 In order to prove the crime of unlawful transportation  
17 of funds or monetary instruments with the intent to promote the  
18 carrying on of specified unlawful activity, in violation of  
19 Section 1956(a)(2)(A), the government must establish beyond a  
20 reasonable doubt each of the following elements:

21 First, that the defendant transported a monetary  
22 instrument or funds from a place in the United States to or  
23 through a place outside the United States, or to a place in the  
24 United States from or through a place outside the United  
25 States;

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1 And, second, that the defendant did so with the intent  
2 to promote the carrying on of specified unlawful activity.

3 In order to prove the crime of unlawful transportation  
4 of funds or monetary instruments to conceal and disguise the  
5 proceeds of specified unlawful activity, the government must  
6 establish beyond a reasonable doubt each of the following:

7 First, that the defendant transported a monetary  
8 instrument or funds from a place in the United States to or  
9 through a place outside the United States, or to a place in the  
10 United States from or through a place outside the United  
11 States;

12 And, second, that the defendant did so with the  
13 knowledge that the monetary instrument or funds involved  
14 represent the proceeds of some form of unlawful activity;

15 And, third, that the defendant did so with knowledge  
16 that the transportation was designed in whole or in part to  
17 conceal or disguise the nature, location, source, ownership, or  
18 control of the proceeds of securities fraud, mail fraud, wire  
19 fraud, and theft from an employee benefit plan.

20 In order to prove the crime of engaging in monetary  
21 transactions in property derived from specified unlawful  
22 activity in violation of Section 1957, the government must  
23 establish the following beyond a reasonable doubt:

24 First, that the defendant engaged or attempted to  
25 engage in a monetary transaction in or affecting interstate

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commerce;

Second, that the monetary transaction involved criminally derived property of a value greater than \$10,000;

Third, that the property was derived from specified unlawful activity; in this case, from securities fraud, mail fraud, wire fraud, or theft from a pension benefit plan;

Fourth, that the defendant acted knowingly; that is, with knowledge that the transaction involved proceeds of a criminal offense;

And, fifth, that the transaction took place in the United States or that the defendant is a United States person.

In order to prove the crime of making false statements to the SEC, in violation of 18 U.S.C. 1001, the government must establish the following elements beyond a reasonable doubt:

First, that the defendant made a statement or representation;

Second, that the statement or representation was material;

Third, that the statement or representation was false, fictitious or fraudulent;

Fourth, that the false, fictitious or fraudulent statement was made knowingly or willfully;

And, fifth, that the statement or representation was made in a matter within the jurisdiction of the government of the United States.

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1 To prove the crime of perjury the government must  
2 prove beyond a reasonable doubt each of the following:

3 First, that the defendant took an oath to testify  
4 truly before the Securities and Exchange Commission, a body  
5 authorized by law to administer oaths;

6 Second, that the defendant made false statements as to  
7 matters about which the defendant testified under oath as set  
8 forth in the information;

9 Third, that the matters as to which it is charged that  
10 the defendant made false statements were material to the issues  
11 under inquiry by the Securities and Exchange Commission;

12 And, fourth, that such false statements were willfully  
13 made.

14 To prove the offense of making a false filing with the  
15 SEC the government must prove beyond a reasonable doubt each of  
16 the following:

17 First, that the defendant was required to file an  
18 application, report, or document with the SEC under the  
19 Securities Exchange Act of 1934 and the rules and regulations  
20 thereunder;

21 Second, that the application, report, or document  
22 filed with the SEC contained false or misleading statements;

23 Third, that the false or misleading statements were  
24 material;

25 And, fourth, that the defendant acted knowingly and

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1 willfully.

2 To prove the offense of theft from an employee pension  
3 benefit plan the government must prove beyond a reasonable  
4 doubt the following elements:

5 First, that the defendant abstracted or converted to  
6 his own use or the use of others the monies, funds, securities,  
7 premiums, credits, property, or other assets of an employee  
8 welfare benefit plan;

9 Second, that the funds abstracted or converted from --  
10 excuse me, that the fund abstracted or converted from was an  
11 employee welfare benefit plan within the meaning of the  
12 statute;

13 And, third, that the defendant acted knowingly and  
14 willfully.

15 THE COURT: Thank you.

16 Mr. Madoff, would you rise again, please.

17 Mr. Madoff, do you understand that if you were to go  
18 to trial the government would have to prove all of those  
19 elements beyond a reasonable doubt?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Now I am going to review with you the  
22 maximum possible penalties for the crimes in question.

23 Count One charging securities fraud carries a maximum  
24 sentence of 20 years' imprisonment, a maximum fine of the  
25 greatest of \$5 million, or twice the gross gain or twice the



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1 gross loss, a mandatory special assessment of \$100, and a  
2 maximum term of supervised release of three years.

3 In fact, each count carries a mandatory special  
4 assessment of \$100, so I am not going to repeat that for each  
5 of the 11 counts.

6 Count Two charges investment adviser fraud. It  
7 carries a maximum sentence of five years' imprisonment, a  
8 maximum fine of the greatest of \$10,000, or twice the gross  
9 gain or twice the gross loss, and a maximum term of supervised  
10 release of three years.

11 Count Three, the mail fraud count, charges a maximum  
12 sentence of 20 years' imprisonment, a maximum fine of the  
13 greatest of \$250,000, or twice the gross gain or twice the  
14 gross loss, and a maximum term of supervised release of three  
15 years.

16 In fact, all 11 counts carry the same maximum term of  
17 supervised release of three years, so I won't repeat that  
18 either.

19 I'm up to Count Four, the wire fraud count. That  
20 carries a maximum sentence of 20 years' imprisonment, a maximum  
21 fine of the greatest of \$250,000, or twice the gross gain or  
22 twice the gross loss.

23 Count Five, the international money laundering count,  
24 the first of those counts, carries a maximum sentence of 20  
25 years' imprisonment, a maximum fine of the greatest of

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1 \$500,000, twice the value of the funds involved, or twice the  
2 gross gain to any person or twice the pecuniary loss to any  
3 person other than yourself.

4 Count Six, the second international money laundering  
5 count, carries a maximum sentence of 20 years' imprisonment, a  
6 maximum fine of the greatest of \$500,000, or twice the value of  
7 the funds involved or twice the gross gain or twice the  
8 pecuniary loss.

9 Count Seven, a money laundering count, charges a  
10 maximum sentence of ten years' imprisonment, a maximum fine of  
11 the greatest of \$250,000, or twice the gross gain or twice the  
12 pecuniary loss.

13 Count Eight, which charges making false statements,  
14 carries a maximum sentence of five years' imprisonment, a  
15 maximum fine of \$250,000, or twice the gross gain or twice the  
16 pecuniary loss.

17 Count Nine charges perjury. It carries a maximum  
18 sentence of five years' imprisonment, a maximum fine of the  
19 greatest of \$250,000, or twice the gross gain or twice the  
20 pecuniary loss.

21 Count Ten charges making a false filing with the SEC.  
22 It carries a maximum sentence of 20 years' imprisonment, a  
23 maximum fine of the greatest of \$5 million, or twice the gross  
24 gain or twice the pecuniary loss.

25 Finally, Count Eleven, which charges theft from an

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1 employee benefit plan, carries a maximum sentence of five  
2 years' imprisonment, a maximum fine of the greatest of  
3 \$250,000, or twice the gross gain or twice the pecuniary loss.

4 Do you understand that those are the possible maximum  
5 sentences?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Now, taking all the counts together, do  
8 you understand that the total maximum sentence of incarceration  
9 that you face is 150 years' imprisonment?

10 THE DEFENDANT: I do.

11 THE COURT: In addition, do you understand that as  
12 part of your sentence I can order restitution to any person or  
13 entity injured as a result of your criminal conduct?

14 THE DEFENDANT: Yes.

15 MR. LITT: Your Honor, I would just note that  
16 restitution is mandatory, not discretionary.

17 THE COURT: I will order restitution if it's  
18 mandatory.

19 You understand that?

20 THE DEFENDANT: I do.

21 THE COURT: I mentioned supervised release. By that I  
22 mean that you would be subject to monitoring when you were  
23 released from prison under terms and conditions that could lead  
24 to reimprisonment without a jury trial if you were to violate  
25 them. And if you were to violate the terms of your supervised

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1 release you could be sent back to prison for the entire term of  
2 your supervised release.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you a citizen of the United States?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Do you understand that as a result of your  
8 guilty plea you may lose certain valuable civil rights, such as  
9 the right to vote, the right to hold public office, the right  
10 to serve on a jury, and the right to possess any kind of  
11 firearm?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Now, have you talked to Mr. Sorkin about  
14 the federal sentencing guidelines?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Do you understand that the guidelines are  
17 now advisory only and that they are no longer mandatory?

18 THE DEFENDANT: Yes.

19 THE COURT: Nonetheless, before I can sentence you I  
20 still have to determine what your sentencing range is under the  
21 guidelines. I can't do that until after the probation  
22 department prepares a presentence report and you, your lawyer,  
23 and the government have had a chance to review the report and  
24 to make any objections.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: And even after I decide what your  
3 guideline range is, I still have the authority in appropriate  
4 circumstances to impose a sentence that is above or below the  
5 guideline range.

6 Do you understand that?

7 THE DEFENDANT: I do.

8 THE COURT: Do you understand that parole has been  
9 abolished in the federal system and, thus, you would not be  
10 released from prison any earlier on parole?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that if your attorneys  
13 or anyone else has attempted to predict what your sentence will  
14 be that the prediction could be wrong?

15 THE DEFENDANT: Yes.

16 THE COURT: And that is because no one, not your  
17 attorney, not the government, can or should make any promises  
18 to you as to what your sentence will be as your sentence cannot  
19 be decided until after the presentence report is completed, I  
20 have ruled on any objections, and I have decided whether there  
21 is any basis to go above or below the guideline range.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Finally, do you understand that even if  
25 your sentence turns out to be different from what your attorney

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1 or anyone else has told you it might be, or even if your  
2 sentence turns out to be different from what you expect, you  
3 will still be bound to your guilty plea and you will not be  
4 allowed to withdraw your plea of guilty?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that by pleading guilty  
7 you may be giving up or waiving certain aspects of your right  
8 to appeal?

9 THE DEFENDANT: Yes.

10 THE COURT: The government provided your lawyers with  
11 a letter, dated March 10, 2009, which we call a Pimentel  
12 letter?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you review that with your lawyers?

15 THE DEFENDANT: I did.

16 THE COURT: And that Pimentel letter explains that  
17 your guideline sentence is 150 years.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: That's the government's calculation.

21 That's the government's position and you and your lawyers will  
22 have the opportunity to comment on that.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand also that this

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1 calculation that's set forth in the government's letter is not  
2 binding on the Court?

3 THE DEFENDANT: Yes.

4 THE COURT: Has anyone offered you any inducements or  
5 threatened you or forced you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Sorkin, do you know of any valid  
8 defense that would prevail at trial, or do you know any reason  
9 why your client should not be permitted to plead guilty?

10 THE DEFENDANT: I do not, your Honor.

11 THE COURT: Mr. Madoff, tell me what you did.

12 MR. SORKIN: Your Honor, may I make one,  
13 respectfully -- according to the Pimentel letter, we agree that  
14 while the maximum statutory penalty in terms of imprisonment is  
15 150 years, the guideline range -- and this can be found on page  
16 6 of the Pimentel letter -- is life imprisonment. The criminal  
17 history category I yields a sentencing range of life  
18 imprisonment.

19 THE COURT: I understand. But the government goes on  
20 further to take the position that when a count does not permit  
21 life, then you look at the statutory maximum. That's the  
22 government's position.

23 MR. SORKIN: I just want to make sure Mr. Madoff  
24 understood that. Thank you, your Honor.

25 THE COURT: Mr. Madoff, you understand that?

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1 THE DEFENDANT: Yes, I do.

2 THE COURT: Technically, the guideline range is life;  
3 but none of the counts in question carries a sentence that can  
4 go up to life. The top is 20 years. According to the  
5 government, in that circumstance then the guideline range is  
6 the maximum and the government's position is that the guideline  
7 range is 150 years. Again, I don't know whether Mr. Sorkin  
8 agrees or disagrees, but we will deal with that before  
9 sentencing.

10 MR. SORKIN: Thank you, your Honor.

11 THE COURT: Mr. Madoff, would you tell me what you  
12 did, please.

13 THE DEFENDANT: Yes, your Honor.

14 Your Honor, for many years up until my arrest on  
15 December 11, 2008, I operated a Ponzi scheme through the  
16 investment advisory side of my business, Bernard L. Madoff  
17 Securities LLC, which was located here in Manhattan, New York,  
18 at 885 Third Avenue. I am actually grateful for this  
19 opportunity to publicly speak about my crimes, for which I am  
20 so deeply sorry and ashamed. As I engaged in my fraud, I knew  
21 what I was doing wrong, indeed criminal. When I began the  
22 Ponzi scheme I believed it would end shortly and I would be  
23 able to extricate myself and my clients from the scheme.  
24 However, this proved difficult, and ultimately impossible, and  
25 as the years went by I realized that my arrest and this day



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1 would inevitably come. I am painfully aware that I have deeply  
2 hurt many, many people, including the members of my family, my  
3 closest friends, business associates, and the thousands of  
4 clients who gave me their money. I cannot adequately express  
5 how sorry I am for what I have done. I am here today to accept  
6 responsibility for my crimes by pleading guilty and, with this  
7 plea allocution, explain the means by which I carried out and  
8 concealed my fraud.

9           The essence of my scheme was that I represented to  
10 clients and prospective clients who wished to open investment  
11 advisory and individual trading accounts with me that I would  
12 invest their money in shares of common stock, options, and  
13 other securities of large well-known corporations, and upon  
14 request, would return to them their profits and principal.  
15 Those representations were false for many years. Up until I  
16 was arrested on December 11, 2008, I never invested these funds  
17 in the securities, as I had promised. Instead, those funds  
18 were deposited in a bank account at Chase Manhattan Bank. When  
19 clients wished to receive the profits they believed they had  
20 earned with me or to redeem their principal, I used the money  
21 in the Chase Manhattan bank account that belonged to them or  
22 other clients to pay the requested funds. The victims of my  
23 scheme included individuals, charitable organizations, trusts,  
24 pension funds, and hedge funds. Among other means, I obtained  
25 their funds through interstate wire transfers they sent from

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1 financial institutions located outside New York State to the  
2 bank account of my investment advisory business, located in  
3 Manhattan, New York, and through mailings delivered by the  
4 United States Postal Service and private interstate carriers to  
5 my firm here in Manhattan.

6 I want to emphasize today that while my investment  
7 advisory business, the vehicle of my wrongdoing, was part of my  
8 firm, Bernard L. Madoff Securities, the other businesses my  
9 firm engaged in, proprietary trading and market making, were  
10 legitimate, profitable, and successful in all respects. Those  
11 businesses were managed by my brother and two sons.

12 To the best of my recollection, my fraud began in the  
13 early 1990s. At that time, the country was in a recession and  
14 this posed a problem for investments in the securities markets.  
15 Nevertheless, I had received investment commitments from  
16 certain institutional clients and understood that those  
17 clients, like all professional investors, expected to see their  
18 investments out-perform the market. While I never promised a  
19 specific rate of return to my client, I felt compelled to  
20 satisfy my clients' expectations, at any cost. I therefore  
21 claimed that I employed an investment strategy I had developed,  
22 called the split strike conversion strategy, to falsely give  
23 the appearance to clients that I had achieved the results I  
24 believed they expected.

25 Through the split strike conversion strategy I

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1 promised to clients and prospective clients that client funds  
2 would be invested in a basket of common stocks within the  
3 Standard & Poors 100 index, a collection of the 100 largest  
4 publicly-traded companies in terms of their market  
5 capitalization. I promised that I would select a basket of  
6 stocks that would closely mimic the price movements of the  
7 Standard & Poors 100 index. I promised that I would  
8 opportunistically time those purchases and would be out of the  
9 market intermittently, investing client funds during these  
10 periods in United States Government-issued securities, such as  
11 United States Treasury bills. In addition, I promised that as  
12 part of the split strike conversion strategy, I would hedge the  
13 investments I made in the basket of common stocks by using  
14 client funds to buy and sell option contracts related to those  
15 stocks, thereby limiting potential client losses caused by  
16 unpredictable changes in stock prices. In fact, I never made  
17 those investments I promised clients, who believed they were  
18 invested with me in the split strike conversion strategy.

19 To conceal my fraud, I misrepresented to clients,  
20 employees, and others that I purchased securities for clients  
21 in overseas markets. Indeed, when the United States Securities  
22 and Exchange Commission asked me to testify as part of an  
23 investigation they were conducting about my investment advisory  
24 business, I knowingly gave false testimony under oath to the  
25 staff of the SEC on May 19, 2006 that I executed trades of

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1 common stock on behalf of my investment advisory clients and  
2 that I purchased and sold the equities that were part of my  
3 investment strategy in European markets. In that session with  
4 the SEC, which took place here in Manhattan, New York, I also  
5 knowingly gave false testimony under oath that I had executed  
6 options contracts on behalf of my investment advisory clients  
7 and that my firm had custody of the assets managed on behalf of  
8 my investment advisory clients.

9 To further cover up the fact that I had not executed  
10 trades on behalf of my investment advisory clients, I knowingly  
11 caused false trading confirmations and client account  
12 statements that reflected the bogus transactions and positions  
13 to be created and sent to clients purportedly involved in the  
14 split strike conversion strategy, as well as other individual  
15 clients I defrauded who believed they had invested in  
16 securities through me. The clients receiving trade  
17 confirmations and account statements had no way of knowing by  
18 reviewing these documents that I had never engaged in  
19 transactions represented on the statements and confirmations.  
20 I knew those false statements and account statements would be  
21 and were sent to clients through the U.S. Mails from my office  
22 here in Manhattan.

23 Another way that I concealed my fraud was through the  
24 filing of false and misleading certified annual reports and  
25 financial statements -- excuse me. Another way that I

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1 concealed my fraud was through the filing of false and  
2 misleading certified audit reports and financial statements  
3 with the SEC. I knew that these audit reports and financial  
4 statements were false and that they would also be sent to  
5 clients. These reports, which were prepared here in the  
6 Southern District of New York, among other things, falsely  
7 reflected my firm's liabilities as a result of my intentional  
8 failure to purchase securities on behalf of my advisory  
9 clients.

10 Similarly, when I recently caused my firm in 2006 to  
11 register as an investment adviser with the SEC, I subsequently  
12 filed with the SEC a document called the form ADV uniform  
13 application for investment adviser registration. On this form  
14 I intentionally and falsely certified under penalty of perjury  
15 that Bernard L. Madoff Investment Securities had custody of my  
16 advisory clients' securities. That was not true, and I knew it  
17 when I completed and filed the form with the SEC, which I did  
18 from my office on the 17th floor of 885 Third Avenue, here in  
19 Manhattan.

20 In more recent years, I used yet another method to  
21 conceal my fraud. I wired money between the United States and  
22 the United Kingdom to make it appear as though there were  
23 actual securities transactions executed on behalf of my  
24 investment advisory clients. Specifically, I had money  
25 transferred from the U.S. bank account of my investment

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1 advisory business to the London bank account of Madoff  
2 Securities International Limited, a United Kingdom corporation  
3 that was an affiliate of my business in New York. Madoff  
4 Securities International Limited was principally engaged in  
5 proprietary trading and was a legitimate, honestly run and  
6 operated business. Nevertheless, to support my false statement  
7 that I purchased and sold securities for my investment advisory  
8 clients in European markets, I caused money from the bank  
9 account of my fraudulent advisory business, located here in  
10 Manhattan, to be wire transferred to the London bank account of  
11 Madoff Securities International Limited.

12 There were also times in recent years when I had  
13 money, which had originated in the New York Chase Manhattan  
14 bank account of my investment advisory business, transferred  
15 from the London bank account of Madoff Securities International  
16 Limited to the Bank of New York operating bank account of my  
17 firm's legitimate proprietary and market making business. That  
18 Bank of New York account was located in New York. I did this  
19 as a way of ensuring that the expenses associated with the  
20 operation of the fraudulent investment advisory business would  
21 not be paid from the operations of the legitimate proprietary  
22 trading and market making businesses.

23 In connection with the purported trades, I caused the  
24 fraudulent investment advisory side of my business to charge  
25 the investment advisory clients four cents per share as a

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1 commission. At times in the last few years, these commissions  
2 were transferred from Chase Manhattan bank account of the  
3 fraudulent investment advisory side of my firm to the account  
4 at Bank of New York, which was the operating account for the  
5 legitimate side of Bernard L. Madoff Investment Securities, the  
6 proprietary trading and market making side of my firm. I did  
7 this to ensure that the expenses associated with the operation  
8 of my fraudulent investment advisory business would not be paid  
9 from the operations of the legitimate proprietary trading and  
10 market making business. It is my belief that the salaries and  
11 bonuses of the personnel involved in the operation of the  
12 legitimate side of Bernard L. Madoff Investment Securities were  
13 funded by the operations of the firm's successful proprietary  
14 trading and market making businesses.

15 Your Honor, I hope I have conveyed with some  
16 particularity in my own words the crimes I committed and the  
17 means by which I committed them. Thank you, your Honor.

18 THE COURT: Thank you, Mr. Madoff.

19 Mr. Sorkin, I don't think there was mention of an  
20 employee benefit plan.

21 MR. SORKIN: The pension fund was mentioned, your  
22 Honor.

23 THE COURT: What page that?

24 MR. SORKIN: I think it's page 2. If you look at the  
25 top, the victim -- I'm quoting -- the victims of my scheme

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1 included individuals, charitable organizations, trusts, pension  
2 funds, and hedge funds.

3 THE COURT: I see.

4 And those pension funds include employee welfare  
5 benefit plans?

6 MR. SORKIN: Yes, your Honor.

7 Is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Madoff, you can be seated for a  
10 moment.

11 Does the government believe that Mr. Madoff's  
12 admissions cover the elements of the crimes of each count?

13 MR. LITT: Yes, your Honor. The government does not  
14 entirely agree with all of the defendant's description of his  
15 conduct. However, the government does believe that his  
16 allocution does cover each of the elements of the charged  
17 offenses.

18 THE COURT: Would you summarize what the government's  
19 evidence would be if the defendant were to go to trial?

20 MR. LITT: Yes.

21 Had this case proceeded to trial, the government would  
22 have proven through testimony and evidence beyond a reasonable  
23 doubt all of the facts set forth in the criminal information.

24 In summary, the government would have proven the  
25 following: The defendant operated a massive Ponzi scheme



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1 through his company, Bernard L. Madoff Investment Securities,  
2 beginning at least as early as the 1980s. Over the decades  
3 working from his New York City office and elsewhere, Madoff  
4 solicited and caused others to solicit prospective clients to  
5 open accounts with his company. His clients included  
6 individuals, charitable organizations, trusts, pension funds,  
7 and hedge funds, among others, and those clients were also his  
8 victims.

9 Madoff told those clients that he would invest their  
10 funds in publicly-traded securities, options, and treasury  
11 bills. In fact, over the life of his scheme Madoff did not buy  
12 stocks or options as he had promised. Instead, Madoff used  
13 client funds to pay other clients who sought to redeem their  
14 investments, and used so-called commission revenue generated by  
15 charging clients four cents per share for shares that he never,  
16 in fact, purchased to generate revenue for his firm. At times,  
17 his firm would have been unable to operate but for the cash  
18 generated from this Ponzi scheme. Madoff repeatedly lied to  
19 clients in person, on telephone calls, and through mailings,  
20 including account statements and confirmations of purchases and  
21 sales of securities that he mailed through the U.S. Postal  
22 Service.

23 Some investors sent checks to Madoff through the  
24 mails, others wired money to Madoff, and many of those wires  
25 came from outside New York State into the Southern District of

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1 New York. Madoff also caused hundreds of millions of dollars  
2 of client funds to be wired overseas to accounts in London.  
3 Some of that money was sent back to his firm and used to pay  
4 its expenses. Other money was sent back and forth between New  
5 York and London to give the false impression that he was  
6 actually buying and selling securities in European markets  
7 when, in fact, he was not.

8 Madoff also used some of the money funneled through  
9 London to support his lavish lifestyle. Madoff also used other  
10 means of deception to hide his scheme. He lied when he told  
11 clients that he was purchasing securities on their behalf.

12 He also lied to regulators, including the SEC. He  
13 filed false and fraudulent certified financial statements with  
14 the SEC that failed to disclose his fraud scheme, failed to  
15 disclose his liabilities to the victims of his Ponzi scheme,  
16 and contained false certifications that the audited statements  
17 had been prepared in accordance with generally-accepted  
18 auditing standards and principles.

19 Mr. Madoff lied in a form that he was required to file  
20 with the SEC as an investment adviser, claiming that his  
21 company had custody of client securities when, in fact, he had  
22 not purchased any securities for those clients.

23 He also lied at least seven separate times in an SEC  
24 deposition in 2006.

25 At the end, Madoff told his clients that he was

1 holding nearly \$65 billion in securities on behalf of those  
2 clients. In fact, he had only a small fraction of that amount.

3 (Continued on next page)

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1 THE COURT: Thank you. Mr. Madoff, please stand.

2 When you did the things you told me you did in your  
3 statement, did you know that what you were doing was wrong and  
4 illegal?

5 THE DEFENDANT: Yes, I did, your Honor.

6 THE COURT: How do you now plead to Count One of the  
7 information, guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: How do you now plead to Count Two of the  
10 information, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: How do you now plead to Count Three,  
13 guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you now plead to Count Four, guilty  
16 or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: How do you now plead to Count Five, guilty  
19 or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: How do you now plead to Count Six, guilty  
22 or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: How do you now plead to Count Seven,  
25 guilty or not guilty?

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1 THE DEFENDANT: Guilty.

2 THE COURT: How do you plead to Count Eight, guilty or  
3 not guilty?

4 THE DEFENDANT: Guilty.

5 THE COURT: How do you plead to Count Nine, guilty or  
6 not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: How do you now plead to Count Ten, guilty  
9 or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: And finally, how do you now plead to Count  
12 Eleven, guilty or not guilty?

13 THE DEFENDANT: Guilty, your Honor.

14 THE COURT: Did you do the things that you are charged  
15 with doing in all 11 counts of the information?

16 THE DEFENDANT: Yes, I did, your Honor.

17 THE COURT: And are you pleading guilty because you  
18 are guilty?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Are you pleading guilty voluntarily and of  
21 your own free will?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: All right. Mr. Madoff, you may be seated.

24 Based on what I have heard, I am inclined to accept  
25 Mr. Madoff's guilty plea.

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1           As I stated the other day, the government received a  
2   number of e-mails from victims objecting to any plea bargain or  
3   any plea deal. As it is clear that there is no plea bargain or  
4   plea deal, there is no basis for these objections. At this  
5   time, nonetheless, if there is any victim who signed our  
6   sign-in sheet who wishes to be heard on the question of whether  
7   I should accept Mr. Madoff's guilty plea, you can have a chance  
8   to speak now. We have a list.

9           Mr. Nierenberg, do you want to speak?

10          MR. NIERENBERG: Yes.

11          THE COURT: All right, sir. Come to the microphone.  
12   And remember that today is not the sentencing. Victims will  
13   have a chance to speak at sentencing. Go ahead.

14          MR. NIERENBERG: I am one of the many victims of  
15   Madoff's egregious crimes. I don't know whether you had a  
16   chance to turn around and look at the victims --

17          THE COURT: Mr. Nierenberg, Mr. Nierenberg --

18          MR. NIERENBERG: I just wanted to --

19          THE COURT: Remain at the podium, please.

20          MR. NIERENBERG: All right. I know that the  
21   operation -- Madoff's operation was massive, that he didn't  
22   commit these crimes alone, and I don't understand why  
23   conspiracy is not a part of one of his pleas. Just to produce  
24   the reams of documents that were received and the elaborate  
25   data that went into them must have required an army of people

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1 to produce. And we all know that Madoff wasn't around a lot at  
2 his operation. There were other people that were there who  
3 handled it when he was gone. I --

4 THE COURT: I gather your point is that I should  
5 reject the plea because the government has not charged  
6 conspiracy?

7 MR. NIERENBERG: No. The question is -- I'm not  
8 suggesting that you reject the plea. What I'm suggesting is  
9 that there's an additional crime that was committed that wasn't  
10 included in the plea that needs to be considered.

11 THE COURT: All right. What I want to hear from now  
12 are victims who object to my accepting the plea.

13 MR. NIERENBERG: Okay.

14 THE COURT: Do you object to my accepting the plea?

15 MR. NIERENBERG: No, I don't.

16 THE COURT: Well, thank you, then. You can have your  
17 seat.

18 MR. NIERENBERG: Okay.

19 THE COURT: Mark Labianca? No.

20 Brian Felsen? Mr. Felsen, do you want to be heard?

21 MR. FELSEN: I would like to be heard, but I do not  
22 object to the plea.

23 THE COURT: All right. If you want to be heard with  
24 respect to sentencing, we will make sure we have procedures to  
25 give victims an opportunity to be heard at sentencing.

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1 MR. FELSEN: Okay.

2 THE COURT: All right. Thank you.

3 Bennett Goldwait? I can't quite read the handwriting.

4 MR. GOLDWORTH: Goldworth. No thank you.

5 THE COURT: Ronnie Sue and Dominic Ambrosino, do you  
6 wish to be heard?

7 MS. AMBROSINO: Yes, I do.

8 THE COURT: All right. Come forward, please. And say  
9 your name again when you get to the microphone.

10 MS. AMBROSINO: My name is Ronnie Sue Ambrosino, and I  
11 would object to the plea -- I just need to find a spot. I have  
12 taken a lot of notes. Judge, I believe that you have the  
13 opportunity today to find out information as to where the money  
14 is and to find out who else may be involved in this crime. And  
15 if that plea is accepted without those two pieces of  
16 information, then I do object. If you can ascertain that you  
17 can get those two pieces of information, I would love to see  
18 this man, who admits that he lied under oath in May of 2006 and  
19 sat here and took an oath today -- I would like to see him  
20 guilty.

21 THE COURT: All right. Thank you.

22 MS. AMBROSINO: Thank you, sir.

23 THE COURT: Maureen Ebel? Go ahead.

24 MS. EBEL: Judge Chin, I would like to present you  
25 with a different scenario that our country could witness if you



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1 reject Mr. Madoff's plea. If we go to trial, we will show our  
2 people in this struggling country and the world, who looks to  
3 us as the global moral leader, that we hold all people  
4 accountable. If we go to trial, we can show all our world that  
5 all crimes, all crimes, including crimes of greed, can be  
6 dissected, ruled upon, and punished. And we can demonstrate  
7 that we are a country that can learn from our mistakes, and we  
8 will be then able to reexamine and improve the mechanisms that  
9 exist for our protection that have failed so completely. If we  
10 go to trial, we have more of a chance to comprehend the global  
11 scope of this horrendous crime. At trial we can hear and bear  
12 witness to the pain that Mr. Madoff has inflicted on the young,  
13 the old, and the infirmed. No man, no matter who he knows or  
14 who he is able to influence, is above the law. Thank you,  
15 Judge Chin.

16 THE COURT: Thank you. All right. That is it with  
17 respect to the victims who signed up on the acceptance of the  
18 plea. Does the government or the defense want to respond to  
19 anything? Does the government want to respond to anything?

20 MR. LITT: May I just have a moment?

21 THE COURT: Yes.

22 MR. LITT: I think the only thing the government would  
23 say is that the government's investigation continues. It is  
24 continuing. A lot of resources and effort are being expended,  
25 both to find assets and to find anyone else who may be

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1 responsible for this fraud.

2 THE COURT: Thank you. Mr. Sorkin?

3 MR. SORKIN: Nothing at this time, your Honor. Thank  
4 you.

5 THE COURT: First of all, I appreciate the comments  
6 from the victims. With respect to Ms. Ambrosino's comments  
7 about where the money is, as the government has just said, it  
8 is continuing its investigation, and this guilty plea certainly  
9 does not preclude the government from proceeding.

10 With respect to Ms. Ebel's comment about how a trial  
11 would show the world that we hold all people accountable, I  
12 believe that these proceedings will do the same thing.

13 Mr. Madoff, please stand. I am accepting the plea.  
14 Mr. Madoff, because you acknowledge that you are guilty as  
15 charged in Counts One through Eleven of the information,  
16 because you know your rights and are waiving them, because your  
17 plea is entered knowingly and voluntarily and is supported by  
18 an independent basis in fact for each of the elements of the 11  
19 offenses, I accept your guilty plea and adjudge you guilty on  
20 Counts One through Eleven of the information. You can be  
21 seated.

22 Mr. Madoff, the probation department will prepare a  
23 presentence report to assist me in sentencing you. You will be  
24 interviewed by the probation department, and it is important  
25 that you give the probation officer truthful and accurate

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1 information, for the report is important in my decision as to  
2 what your sentence will be. You and your attorney have a right  
3 and will have an opportunity to review the report, to challenge  
4 or comment upon it and to speak on your behalf before  
5 sentencing.

6 Sentencing is set for June 16th at 1:30 p.m.

7 Turning to bail, is the government requesting that I  
8 remand Mr. Madoff pending sentencing?

9 MR. LITT: Yes. The government moves for remand at  
10 this time pursuant to 18 USC 3143, which puts the burden on the  
11 defendant to show by clear and convincing evidence that he can  
12 be trusted to appear for future court appearances.

13 The defendant has now pled guilty and been found  
14 guilty of 11 -- or does the Court wish to hear argument now  
15 or --

16 THE COURT: Well, let me ask Mr. Sorkin whether he  
17 opposes remand.

18 MR. SORKIN: We do, your Honor, and I'd like to be  
19 heard on that point.

20 THE COURT: Let me hear from Mr. Sorkin.

21 MR. SORKIN: Thank you, your Honor. May I go to the  
22 podium, your Honor?

23 THE COURT: Yes, wherever you would like.

24 MR. SORKIN: Thank you. Thank you, your Honor. Your  
25 Honor, let me take just a little bit of while, because I want

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1 to review the history of the bail as it related to this case.

2 THE COURT: Yes. The government provided me with the  
3 transcripts and the letter briefs, and I've reviewed them too.

4 MR. SORKIN: I'm not going to go through every one of  
5 them, but I think it's important that I list the chronology and  
6 how we got to this point today.

7 THE COURT: That's fine. That's fine.

8 MR. SORKIN: Your Honor, this case started when  
9 Mr. Madoff on December 10th confessed his wrongdoing to his two  
10 sons, knowing full well that his two sons were going to turn  
11 him in. He didn't run. He didn't attempt to flee at that  
12 time. When he was arrested by the FBI the next morning, he  
13 confessed to the FBI.

14 He appeared on December 11th before Magistrate Judge  
15 Eaton, and a personal recognizance bond of ten million dollars  
16 was signed by Mr. Madoff and his wife. There were three  
17 additional cosigners that were required, and it was secured by  
18 Mr. Madoff's residence in Manhattan. Surrender of Mr. Madoff's  
19 travel documents took place, and his travel was restricted to  
20 the Southern and Eastern Districts of New York and the District  
21 of Connecticut.

22 The Pretrial Services at the time, your Honor, did not  
23 recommend in its initial recommendation that Mr. Madoff be  
24 remanded, and I add additionally that the government had no  
25 difference and no objection with any of the conditions that

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1 were imposed on December 11th. That was before Magistrate  
2 Judge Eaton.

3 On December 17th, your Honor, before another  
4 magistrate judge, Magistrate Judge Gorenstein, Mr. Madoff --  
5 and it was ratcheted up -- was placed on home detention in his  
6 apartment with electronic ankle bracelet monitoring. He was  
7 permitted to travel only to his attorney's offices and to the  
8 court. A curfew of 7:00 p.m. through 9:00 a.m. was imposed,  
9 and this was done in addition to the entry of confession of  
10 judgments with respect to his wife's properties on Montauk, New  
11 York, and Palm Beach, Florida, a surrender of Mrs. Madoff's  
12 passport and a reduction of the number of cosigners on the bond  
13 from four to two. This, too, your Honor, was consented to by  
14 the government. Indeed, I believe it was done by stipulation  
15 without argument before Magistrate Judge Gorenstein.

16 On December 19th, again, on consent of the government,  
17 a ten million dollar personal recognizance bond was signed by  
18 Mr. Madoff, his wife, and his brother, secured by confessions  
19 of judgment on his wife's properties in Montauk, in New York,  
20 and Palm Beach. The passports of both Mrs. Madoff had already  
21 been surrendered, and other than scheduled court appearances,  
22 Mr. Madoff was confined to his home 24 hours a day. He was no  
23 longer permitted to visit his counsel. And they had, in  
24 addition to the 24-hour-a-day confinement, an electronic  
25 monitoring device, which is still attached to his ankle.

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1 At his wife's own expense --

2 THE COURT: Would the audience please remain quiet.

3 Go ahead.

4 MR. SORKIN: Because Mr. Madoff's assets were all  
5 frozen, but his wife's were not, although she later voluntarily  
6 committed to a freeze of her assets under certain restrictions.  
7 So with the government's consent, Mrs. Madoff's own assets,  
8 which were not frozen by Judge Stanton or any judge in this  
9 court -- she agreed to pay a security firm acceptable to the  
10 government to provide the following services to prevent harm or  
11 flight.

12 And with these unfrozen assets, not objected to by the  
13 government, Mr. Madoff has round-the-clock monitoring at his  
14 building 24 hours a day, including video monitoring of all of  
15 his apartment, doors, communications devices, and services  
16 permitting security to send a direct signal from an observation  
17 post to the FBI in the event of even the suspicion of harm or  
18 flight. This is known as a panic button. There are additional  
19 guards available on request, if necessary, to prevent flight or  
20 harm, both inflicted by Mr. Madoff -- I'm dealing with the  
21 danger to the community issue -- and also harm to Mr. Madoff.

22 On January 12th, your Honor -- and again, this was by  
23 consent of the government. On January 12th, Magistrate Judge  
24 Ronald Ellis imposed additional restrictions. This was  
25 briefed, as your Honor well knows. It was argued by Magistrate

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1 Judge Ellis. And on that date, Magistrate Judge Ellis  
2 incorporated the restrictions set forth in the order of Judge  
3 Stanton, who has jurisdiction over the SEC matter, including  
4 restrictions on the transfer of all property whatsoever  
5 wherever located in the possession or under the control of  
6 Mr. Madoff. And that was part of the SEC consent under the TRO  
7 and also the consent under the preliminary injunction, which  
8 Mr. Madoff consented to. Magistrate Judge Ellis incorporated  
9 these restrictions to a voluntary restraint agreement, which  
10 the government agreed to, involving Mrs. Madoff's assets and  
11 restricted the transfer of all assets owned by her voluntarily,  
12 your Honor.

13 Additionally, Magistrate Judge Ellis directed the  
14 compilation of an inventory of all valuable portable items in  
15 the Manhattan home, which is to be checked once every two weeks  
16 by government-approved security, who are also required to  
17 inspect all outgoing mail.

18 The government appealed Magistrate Judge Ellis'  
19 ruling, and before District Judge Lawrence McKenna on January  
20 16th, 2009, argument was held. The matter was briefed, and  
21 Judge McKenna added additional conditions: One, a compilation  
22 of any inventory of all valuable portable items in the homes in  
23 Montauk, Palm Beach, as well as any property owned by  
24 Mrs. Madoff in a small residence in France.

25 I quote, which your Honor, I'm sure, has read, from

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1 Judge McKenna's statement in court after hearing argument and  
2 seeing papers, that, quote -- and this is from Judge McKenna --  
3 I think the chances of Mr. Madoff fleeing at this point are as  
4 close to nil as you can get in any bail package, period,  
5 unquote.

6 Now, nothing has changed, your Honor, and I agree it  
7 has changed substantially in terms of the plea. And I agree  
8 with Mr. Litt that the burden is upon us to show by clear and  
9 convincing evidence that Mr. Madoff is neither a flight risk  
10 nor a risk to the community.

11 As far as we are aware, your Honor, Pretrial Services  
12 has not found that Mr. Madoff has been negligent or careless in  
13 complying with all of the bail conditions. There has been no  
14 incident at all, as far as we are aware, that has been conveyed  
15 to us by Pretrial or the government that Mr. Madoff has  
16 attempted at any time to flee or certainly, which the  
17 government conceded before Magistrate Judge Ellis and Judge  
18 McKenna, posed any risk of harm. The argument before Judge  
19 Ellis and Judge McKenna was the risk of harm was in the  
20 financial world, that he would dissipate assets. That was  
21 taken care of, your Honor, respectfully, by Magistrate Judge  
22 Ellis and by Judge McKenna. All mail going out, all packages  
23 going out are inspected by the security firm approved by the  
24 government.

25 I respectfully submit, your Honor, that the change has



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1 been the media attention and the increased and, in many cases,  
2 justifiable anger by people who claim they lost money, but the  
3 Bail Reform Act doesn't deal with those two issues. I do not  
4 believe, your Honor, that the precedent set in this court where  
5 such individuals as Rigas in the Adelphia case, Ebbers in the  
6 WorldCom case, Messrs. Skilling and Lay -- Mr. Lay passed away  
7 before sentencing -- all of whom were facing substantial years  
8 in prison, Rigas and Ebbers in this court, Mr. Skilling in  
9 Texas. All were released on bail pending sentence. All went  
10 to trial but did not plead guilty, and all, your Honor, as far  
11 as I am aware, never once confessed at the get-go to the  
12 wrongdoing that you heard Mr. Madoff confess to today.

13 So I would respectfully submit, your Honor, that there  
14 is no chance that Mr. Madoff will certainly be a risk to the  
15 community, a danger to the community. And his risk of  
16 flight -- and I agree with Judge McKenna -- is virtually nil  
17 with all of the restrictions that have been imposed on him. So  
18 I respectfully request that his bail be continued.

19 I would also add, your Honor -- again, I refer to the  
20 Bail Reform Act as not being relevant on those two other  
21 issues. What is also relevant, your Honor, is that Mr. Madoff  
22 is going to have the opportunity, I am sure, if the government  
23 and the defense can come to some agreement, to review literally  
24 thousands of thousands of documents which the trustee and the  
25 government have been reviewing to discover where this

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1 forfeiture number comes from. And we've been able to  
2 communicate with him in his apartment, and I think that is a  
3 factor that your Honor should consider, even though that is not  
4 my argument with respect to the Bail Reform Act. I think we  
5 have met all the conditions under the act.

6 So by clear and convincing evidence, I don't think he  
7 is a risk of either danger to the community, flight, and I  
8 would respectfully request that his bail be continued. Thank  
9 you, your Honor.

10 THE COURT: I don't need to hear from the government.  
11 It is my intention to remand Mr. Madoff.

12 Please, ladies and gentlemen, please.

13 Now, I have a number of people who signed in who  
14 wanted to be heard on the issue of bail, and I think you should  
15 only be heard if you object to remand.

16 Adriane Biondo? Mr. Ross? Helen Chaitman?

17 MS. CHAITMAN: No objection.

18 THE COURT: Donald Schupak?

19 MR. SCHUPAK: I do not object.

20 THE COURT: Mark Labianca?

21 MR. LABIANCA: I do not object.

22 THE COURT: Sharon Lissauer?

23 As Mr. Madoff has pled guilty, he is no longer  
24 entitled to the presumption of innocence. The exposure is  
25 great, 150 years in prison. In light of Mr. Madoff's age, he

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1 has an incentive to flee, he has the means to flee, and thus,  
2 he presents a risk of flight. Bail is revoked, and the  
3 defendant is remanded.

4 MR. SORKIN: Your Honor, would your Honor consider,  
5 respectfully, a stay so that we might appeal your Honor's bail  
6 decision? We intend to do it expeditiously.

7 THE COURT: The request for a stay is denied.

8 MR. SORKIN: Thank you.

9 THE COURT: Sentencing, as I said, is set for June  
10 16th, 1:30 p.m. Some of the victims may wonder why do we need  
11 so much time. Well, the probation department has to prepare a  
12 presentence report. By law, the defendant is entitled to 35  
13 days to review the presentence report before sentencing. We  
14 also have to give the parties an opportunity to submit written  
15 materials.

16 Mr. Madoff, I will see you at sentencing. We are  
17 adjourned.

18 o0o

I (We) hereby certify that the foregoing  
is a true and accurate transcript, to the best  
of my (our) skill and ability, from my (our)  
stenographic notes of the proceeding.

*Heaven Greenbaum*

\_\_\_\_\_  
Official Court Reporter  
U.S. District Court